

Before the  
Federal Communications Commission  
Washington, D.C. 20554

GEN. Docket No. 87-570

In the Matter of

Amendment of Part 1 of the  
Commission's Rules and Regulations  
Regarding Implementation of the  
Debt Collection Act of 1982 and  
Related Statutory Provisions

### REPORT AND ORDER

Adopted: October 28, 1988; Released: December 23, 1988

By the Commission:

### INTRODUCTION

1. The *Notice of Proposed Rule Making* in this proceeding<sup>1</sup> requested comment on proposed rules to implement the Debt Collection Act of 1982, 31 U.S.C. §§ 3701, 3711, 3716-3719; 5 U.S.C. § 5514, and section 2653(a)(1) of the Deficit Reduction Act of 1984, 31 U.S.C. § 3720A. In accordance with those statutory provisions, uniform standards for the implementation of the Debt Collection Act were promulgated by the Department of Justice (DOJ) and the General Accounting Office (GAO),<sup>2</sup> and related regulations were also issued by the Office of Personnel Management.<sup>3</sup> The Commission's rules proposed procedures to be employed for the collection of debts owed to the United States Government, in conformance with the above statutory provisions, standards and related regulations.

2. With respect to the Debt Collection Act, the proposed rules addressed the use of administrative and salary offsets;<sup>4</sup> the reporting of delinquent individual debtors to consumer reporting agencies; the assessment of interest, penalties, administrative costs and other sanctions against delinquent debtors; and the issuance of contracts to private collection services for the recovery of money owed to the United States. Pursuant to the Deficit Reduction Act, the proposed rules also delineated the procedures to be followed in referring delinquent debts to the Department of Treasury for collection by offsets against tax refunds owed to the particular debtor. Further, the rules provided that discharged debts would be reported to the Internal Revenue Service.<sup>5</sup>

### DISCUSSION

3. The only comments received in this proceeding were filed by Northwestern Indiana Telephone Company (NITCO). NITCO's comments address only the applicability of the proposed procedures to the recovery of monetary forfeitures imposed by the Commission under sections 503 and 504 of the Communications Act, 47

U.S.C. §§ 503, 504. Specifically, NITCO urges that the proposed rules clarify that the Commission will invoke the proposed procedures only after the judicial review proceedings prescribed in sections 503 and 504 have run their course.

4. We substantially agree with NITCO's recommendation and have modified the final rules accordingly.<sup>6</sup> As we noted in the *NPRM*, it is clear that the procedures prescribed by the Debt Collection Act were designed, among other things, for the collection of monetary forfeitures imposed by the Government.<sup>7</sup> The uniform standards issued by DOJ and GAO, however, clearly provide that debt collection procedures do not override other statutes and implementing regulations providing for the collection of particular claims. Thus, the standards prescribe that "laws and regulations that are specifically applicable to claims collection activities of a particular agency take precedence over [the procedures set forth by the standards]." 4 C.F.R. § 101.4. In addition, the uniform standards recite that:

Nothing contained in this chapter is intended to require an agency to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

4 C.F.R. § 101.7. Therefore, it is manifest that because sections 503 and 504 of the Communications Act and the regulations implementing those provisions<sup>8</sup> delineate specific procedures for the collection of forfeitures imposed by the Commission, those procedures must be followed before considering other procedures adopted in this proceeding.<sup>9</sup>

5. In this connection, we also note that the legislative history of the Debt Collection Act does not evince any intent to defeat carefully delineated collection procedures already prescribed by other statutes. Similarly, the provisions of section 2653(a)(1) of the Deficit Reduction Act do not override the procedures in the Communications Act for collection of forfeitures. The tax refund offset program in the Deficit Reduction Act was designed as a voluntary measure, available to federal agencies at their discretion and "to the extent practicable." See Omnibus Budget Reconciliation Act of 1977, Pub. L. No. 100-203, § 9402, 101 Stat. 1330-376. There is no evidence that Congress authorized the use of tax refund offsets as a substitute for procedures mandated by other statutes, including sections 503 and 504 of the Communications Act.<sup>10</sup> Accordingly, the amended rules provide that forfeitures will not be collected through tax offsets or other means until the mandatory procedures in the Communications Act have been completed.<sup>11</sup>

6. In sum, once the procedures prescribed by sections 503 and 504 of the Communications Act have become final, the Commission will determine whether the collection of a monetary forfeiture under other debt collection alternatives adopted herein is appropriate. In choosing to collect a forfeiture under any of those alternatives, the Commission will not be required to duplicate any hearing already conducted pursuant to the forfeiture provisions. See 4 C.F.R. § 101.7, *supra*.

7. Except for the clarification of proposed rule 1.1905 incorporating the foregoing analysis, we conclude that the rules set forth in the *Notice of Proposed Rule Making* should be adopted as proposed.<sup>12</sup>

**ADMINISTRATIVE MATTERS**

8. In accordance with the requirements prescribed in 5 C.F.R. § 550.1105, the Commission's final rules concerning salary offsets, Rules 1.1925-1.1935, have been approved by the Office of Personnel Management.

9. The final rules adopted herein have been analyzed pursuant to the Paperwork Reduction Act of 1980 (Pub. L. No. 96-511). In this connection, we find that the rules prescribe no new or modified forms to be submitted by the public. Further, we have determined that these rules will not increase the public's burden concerning the collection, recordkeeping, labeling, disclosure or retention of information.

**ORDERING CLAUSES**

10. Accordingly, IT IS ORDERED that the attached modifications to the Commission's rules ARE ADOPTED pursuant to the authority contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. §§ 154(i), 154(j), and 303(r)), the Debt Collection Act of 1982 (31 U.S.C. §§ 3701, 3711, 3617-3719; 5 U.S.C. § 5514), and section 2653 of the Deficit Reduction Act of 1984 (31 U.S.C. § 3720A). These rules will become effective [30 days after the publication of this document in the Federal Register].

11. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

**FEDERAL COMMUNICATIONS COMMISSION**

Donna R. Searcy  
Secretary

**APPENDIX****FINAL RULES Part 1 -- [AMENDED]**

Part 1 [Practice and Procedure] of Chapter 1 of Title 47 of the Code of Federal Regulations is amended by adding a new Subpart N as follows:

1. The authority for Subpart N is as follows:

Authority: 47 U.S.C. §§ 154(i), 303(r); 31 U.S.C. §§ 3701, 3711, 3716-3719, 3720A; 5 U.S.C. § 5514; 4 C.F.R. Parts 101-105; 5 C.F.R. Part 550.

2. Subpart N is added to read as follows:

**SUBPART N - COLLECTION OF CLAIMS OWED THE UNITED STATES****General Provisions**

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**Interest, Penalties, Administrative Costs and Other Sanctions**

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1.1950

Reporting discharged debts to the Internal Revenue Service.  
Offset against tax refunds.

1.1951

**General provisions concerning interagency requests**

1.1952

Interagency requests.

Authority: 31 U.S.C. § 3701; 31 U.S.C. § 3711 *et seq.*; 5 U.S.C. § 5514; 4 C.F.R. Parts 101-105; 5 C.F.R. Part 550

**General****1. 1901 Definitions.**

(a) The term "administrative offset" means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) The term "agency" means the Federal Communications Commission (Commission) or any other agency of the U.S. Government as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission, a military department as defined by section 102 of title 5 U.S.C., an agency or court of the judicial branch, or an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(c) The term "agency head" means the Chairman of the Federal Communications Commission.

(d) The terms "appropriate agency official" or "designee" means the Managing Director of the Commission or such other official as may be named by the Managing Director.

(e) The terms "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another federal agency. They include amounts owing to the United States on account of loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, taxes, and forfeitures (except those arising under the Uniform Code of Military Justice), and other similar sources.

(f) The term "creditor agency" means the agency to which the debt is owed.

(g) The term "delinquent" means a claim or debt which has not been paid by the date specified in the agency's written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date, or, at any time thereafter, the debtor has failed to satisfy an obligation under a payment agreement with the agency.

(h) The term "disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 C.F.R. § 581.105(b) through (f) to determine disposable pay subject to salary offset.

(i) The term "employee" means a current employee of the Commission or of another agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserve).

(j) The term "FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 C.F.R. Parts 101-105.

(k) The term "paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

(l) The term "referral for litigation" means referral to the Department of Justice for appropriate legal proceedings except where the Commission has the statutory authority to handle the litigation itself.

(m) The term "salary offset" means an administrative offset to collect a debt under 5 U.S.C. § 5514 by deductions(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(n) The term "waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. § 5584, 10 U.S.C. § 2774, or 32 U.S.C. § 710, 5 U.S.C. § 8346(b), or any other law.

#### 1.1902 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. § 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulations published under the authority of 31 U.S.C. § 3726 (see 41 C.F.R. Part 101-41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulations (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations. (See 48 CFR Part 32). If not otherwise provided for in the FAR system, contract claims that have been the subject of a contracting officer's final decision in accordance with section 6(a) of the Contract Disputes Act of 1978 (41 U.S.C. § 605(a)), may be determined, collected, compromised, terminated or settled under the provisions of this regulation, except that no additional review of the debt shall be granted beyond that provided by the contracting officer in accordance with the provisions of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. § 605), and the amount of any interest, administrative charge, or penalty charge shall be subject to the limitations, if any, contained in the contract out of which the claim arose.

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice (DOJ) as only the DOJ has authority to compromise, suspend, or terminate collection action on such claims.

(d) Tax claims are also excluded from the coverage of this regulation.

#### 1.1903 Use of procedures.

Procedures authorized by this regulation (including, but not limited to, disclosure to a consumer reporting agency, contracting for collection services, administrative offset and salary offset) may be used singly or in combination, so long as the requirements of applicable law and regulation are satisfied.

#### 1. 1904 Conformance to law and regulations.

The requirements of applicable law (31 U.S.C. §§ 3701-3719, as amended by Pub.L. 97-365, 96 Stat. 1749) have been implemented in government wide standards: (a) the Regulations of the Office of Personnel Management (5 C.F.R. Part 550) and (b) the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 C.F.R. Parts 101-105). Not every item in the above described standards has been incorporated or referenced in this regulation. To the extent, however, that circumstances arise which are not covered by the terms stated in these regulations, the Com-

mission will proceed in any actions taken in accordance with applicable requirements found in the standards referred to in this section.

#### **1.1905 Other procedures; collection of forfeiture penalties.**

Nothing contained in these regulations is intended to require the Commission to duplicate administrative or other proceedings required by contract or other laws or regulations, nor do these regulations supercede procedures required by other statutes or regulations. In particular, the assessment and collection of monetary forfeiture penalties imposed by the Commission will be governed initially by the procedures prescribed by 47 U.S.C. §§ 503, 504 and 47 C.F.R. § 1.80. After compliance with those procedures, the Commission may determine that the collection of a monetary forfeiture under the collection alternatives prescribed by this subpart is appropriate but need not duplicate administrative or other proceedings.

#### **1. 1906 Informal action.**

Nothing contained in these regulations is intended to preclude utilization of informal administrative actions or remedies which may be available.

#### **1. 1907 Return of property.**

Nothing contained in this regulation is intended to deter the Commission from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

#### **1. 1908 Omissions not a defense.**

The failure of the Commission to comply with any provision in this regulation shall not serve as a defense to the debt.

### **Administrative Offset - Consumer Reporting Agencies - Contracting for Collection**

#### **1. 1911 Demand for payment.**

(a) Written demands for payment shall be made promptly upon a debtor in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, the Commission will give due regard to the need to act promptly so that, as a general rule, if it becomes necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interest (for example, to prevent the statute of limitations, 28 U.S.C. § 2415, from expiring), written demand may be preceded by other appropriate actions under this chapter, including immediate referral for litigation.

(b) The initial demand letter will inform the debtor of: (1) The basis for the indebtedness and the right of the debtor to request review within the agency; (2) the applicable standards for assessing interest, penalties, and administrative costs (Sections 1.1940 and 1.1941 of this

subpart) and; (3) the date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand-delivered.

(c) As appropriate to the circumstances, the Commission may include either in the initial demand letter or in subsequent letters, matters relating to alternative methods of payment, policies with respect to use of consumer reporting agencies and collection services, the agency's intentions with respect to referral of the debt to the Department of Justice for litigation, and, depending on applicable statutory authority, the debtor's entitlement to consideration of waiver.

(d) The Commission will respond promptly to communications from the debtor, within 30 days whenever feasible, and will advise debtors who dispute the debt that they must furnish available evidence to support their contentions.

(e) If, either prior to the initiation of, at any time during, or after completion of the demand cycle, the Commission determines to pursue administrative offset, then the procedures specified in sections 1.1912 and 1.1913 as applicable, will be followed. The availability of funds for offset and the agency's determination to pursue that remedy, release the agency from the necessity of further compliance with paragraphs (a), (b) and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of sections 1.1912 and 1.1913 as applicable.

#### **1. 1912 Collection by administrative offset.**

(a) Collection by administrative offset will be undertaken in accordance with these regulations on all claims which are liquidated or certain in amount, in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(1) Whether collection by administrative offset is feasible is a determination to be made by the agency on a case-by-case basis, in the exercise of sound discretion. The Commission will consider not only whether administrative offset can be accomplished practically, but also whether offset is best suited to further and protect all of the Government's interest. In appropriate circumstances, the Commission may give due consideration to the debtor's financial condition and is not required to use offset in every instance in which there is an available source of funds. The Commission may also consider whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement.

(b) Before the offset is made, a debtor shall be provided with the following: written notice of the nature and amount of the debt, and the agency's intention to collect by offset; opportunity to inspect and copy agency records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt.

(1) The Commission will exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination will weigh the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, the Commission will normally accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(2) In cases where the procedural requirements specified in paragraph (b) of this section have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance or pursuant to 47 U.S.C. §§ 503, 504 and 47 C.F.R. § 1.80, the agency is not required to duplicate those requirements before taking administrative offset.

(3) The Commission may not initiate administrative offset to collect a debt under 31 U.S.C. § 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. When the debt first accrued is to be determined according to existing law regarding the accrual of debts, such as under 28 U.S.C. § 2415.

(4) The Commission is not authorized by 31 U.S.C. § 3716 to use administrative offset with respect to: (i) debts owed by any State or local Government; (ii) debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or (iii) any case in which collection of the claim or type of claim by administrative offset is explicitly provided for or prohibited by another statute.

(5) The Commission may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by paragraph (b) of this section if: (i) failure to take the offset would substantially prejudice the Government's ability to collect the debt, and (ii) the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(6) The Commission will obtain credit reports on delinquent accounts to identify opportunities for administrative offset of amounts due to a delinquent debtor when other collection techniques have been unsuccessful.

(c) Type of hearing or review:

(1) For purposes of this section, whenever the Commission is required to provide a hearing or review within the agency, it shall provide the debtor with a reasonable opportunity for an oral hearing when: (i) any applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (ii) the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence; for ex-

ample, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the Commission will carefully document all significant matters discussed at the hearing.

(2) This section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity.

(3) In those cases where an oral hearing is not required by this section, the agency will make its determination on the request for waiver or reconsideration based upon a "paper hearing," that is, a review of the written record.

(d) Appropriate use will be made of the cooperative efforts of other agencies in effecting collection by administrative offset. Generally, the Commission will not refuse to comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States unless the requesting agency has not complied with the applicable provisions of these standards or the offset would be otherwise contrary to law.

(e) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. § 3728.

(f) Whenever the creditor agency is not the agency which is responsible for making the payment against which administrative offset is sought, the latter agency shall not initiate the requested offset until it has been provided by the creditor agency with an appropriate written certification that the debtor owes a debt (including the amount) and full compliance with the provisions of this section has taken place.

(g) When collecting multiple debts by administrative offset, the Commission will apply the recovered amounts to those debts in accordance with the best interest of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation.

**1. 1913 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.**

(a) Unless otherwise prohibited by law, the Commission may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment, or a minimal number of payments, debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, the Commission shall include written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The Commission has complied with the applicable statutes, regulations and procedures of the Office of Personnel Management; and

(3) The Commission has complied with the requirements of section 1.1912 of this subpart, including any required hearing or review.

(c) Once the Commission decides to request administrative offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory payment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If the Commission collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, it shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the Office of Personnel Management to review the merits of the Commission's determination with respect to the amount and validity of the debt, its determination as to waiver under an applicable statute, or its determination to provide or not provide an oral hearing.

#### **1. 1914 Collection in Installments.**

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this subpart should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The Commission will obtain financial statements from debtors who represent that they are unable to pay the debt in one lump sum. If the Commission agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the agreement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debtor and debtor's ability to pay. If possible, the installment payments should be sufficient size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than \$50 per month will be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause.

(b) If the debtor owes more than one debt and designates how a voluntary installment is to be applied among those debts, that designation must be followed. If the debtor does not designate the application of the payment, the Commission will apply payments to various debts in accordance with the best interests of the United

States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

#### **1. 1915 Exploration of Compromise.**

The Commission may attempt to effect compromise, preferably during the course of personal interviews, in accordance with the standards set forth in Part 103 of the Federal Claims Collection Standards (4 C.F.R. Part 103).

#### **1. 1916 Suspending or Terminating Collection Action.**

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the Federal Claims Collection Standards (4 C.F.R. Part 104).

#### **1. 1917 Referrals to the Department of Justice or the General Accounting Office.**

Referrals to the Department of Justice or the General Accounting Office shall be made in accordance with the standards set forth in Part 105 of the Federal Claims Collection Standards (4 C.F.R. Part 105).

#### **1. 1918 Use of Consumer Reporting Agencies.**

(a) The term "individual" means a natural person, and the term "consumer reporting agency" has the meaning provided in the Federal Claims Collection Act, as amended, at 31 U.S.C. § 3701(a)(3) or the Fair Credit Reporting Act, at 15 U.S.C. § 1681a(f).

(b) The Commission may disclose to a consumer reporting agency, from a system of records, information that an individual is responsible for a claim if -

(1) notice required by section 5 U.S.C. § 552a(e)(4) indicates that information in the system may be disclosed to a consumer reporting agency;

(2) the claim has been reviewed and it is decided that the claim is valid and overdue;

(3) the Commission has notified the individual in writing -

(A) that payment of the claim is overdue;

(B) that, within not less than 60 days after sending the notice, the Commission intends to disclose to a consumer reporting agency that the individual is responsible for that claim;

(C) of the specific information to be disclosed to the consumer reporting agency; and

(D) of the rights the individual has to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to administrative appeal or review of the claim; and

(4) The individual has not -

(A) repaid or agreed to repay the claim under a written repayment plan that the individual has signed and the agency has agreed to; or

(B) filed for review of the claim under paragraph (g) of this section;

(c) The Commission shall -

(1) disclose promptly, to each consumer reporting agency to which the original disclosure was made, a substantial change in the condition or amount of the claim;

(2) verify or correct promptly information about the claim, on request of a consumer reporting agency for verification of any or all information so disclosed; and

(3) obtain satisfactory assurances from each consumer reporting agency that they are complying with all laws of the United States relating to providing consumer credit information.

(d) The Commission shall ensure that information disclosed to the consumer reporting agency is limited to -

(1) information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

(2) the amount, status, and history of the claim; and

(3) the agency or program under which the claim arose.

(e) All accounts in excess of \$100 that have been delinquent more than 31 days will normally be referred to a consumer reporting agency.

(f) Before disclosing information to a consumer reporting agency, the Commission shall take reasonable action to locate an individual for whom the head of the agency does not have a current address to send the notice.

(g) Before disclosing information to a consumer reporting agency, the Commission shall provide, on request of an individual alleged by the agency to be responsible for the claim, for a review of the obligation of the individual, including an opportunity for reconsideration of the initial decision on the claim.

(h) Under the same provisions as described above, the Commission may disclose to a credit reporting agency, information relating to a debtor other than a natural person. Such commercial debt accounts are not covered by the Privacy Act.

#### 1. 1919 Contracting for collection services.

(a) The Commission has authority to contract for collection services to recover delinquent debts, provided that the following conditions are satisfied:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation is retained by the agency;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. § 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. § 1692;

(3) The contractor must be required to account strictly for all amounts collected;

(4) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable the Commission to determine whether to pursue collection through litigation or to terminate collection efforts; and

(5) The contractor must agree to provide any data contained in its files relating to paragraphs (a)(1), (2), and (3) of § 105.2 of the Federal Claims Collection Standards (4 C.F.R. Part 105) upon returning an account to the Commission for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts:

(1) The Commission may fund a collection service contract on a fixed-fee basis, that is, payment of a fixed fee determined without regard to the amount actually

collected under the contract. Payment of the fee under this type of contract must be charged to available agency appropriations.

(2) The Commission may also fund a collection service contract on a contingent-fee basis, that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice.

(3) The Commission may enter into a contract under paragraph (b)(1) of this section only if and to the extent provided in advance appropriation acts or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute.

(4) Except as authorized under paragraph (b)(2) of this section, or unless the receipt qualifies as a refund to the appropriation, or unless otherwise specifically provided by law, the Commission must deposit all amounts recovered under collection service contracts (or by agency employees on behalf of the agency) in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. § 3302.

(c) The Commission will consider the use of collection agencies at any time after the account is 61 days past due. In any case where an account is six months or more past due, the Commission may turn it over to a collection agency unless referred for litigation or unless arrangements have been made for a workout procedure or the Commission has exercised its authority to write off the debt pursuant to section 1.1916.

(d) The Commission will generally not use a collection agency to collect a delinquent debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

#### Salary Offset

##### 1. 1925 Purpose.

This section provides the standards to be followed by FCC in implementing 5 U.S.C. § 5514 to recover a debt from the pay account of an FCC employee, and establishes procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

##### 1. 1926 Scope.

(a) Coverage. This section applies to agencies and employees as defined by section 1.1901.

(b) Applicability. This section and 5 U.S.C. § 5514 apply in recovering certain debts by offset, except where the employee consents to the recovery, from the current pay account of that employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. § 5514 and these regulations should be consistent with the provisions of the Federal Claims Collection Standards (4 C.F.R. Parts 101-105).

(1) Excluded debts or claims. The procedures contained in this section do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. §§ 1 *et seq.*), the Social Security Act (42 U.S.C. §§ 301 *et seq.*) or the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.* travel advances in 5 U.S.C. § 5705 and employee training expenses in 5 U.S.C. § 4108).



(2) Waiver requests and claims to the General Accounting Office. This section does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. § 5584, 10 U.S.C. § 2774, or 32 U.S.C. § 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

(c) Time Limit. Under 4 C.F.R. § 102.3(b)(3) offset may not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless an exception applies as stated in § 102.3(b)(3).

#### 1. 1927 Notification.

(a) Salary offset deductions shall not be made unless the Managing Director of the Commission, or such other official as may be named in the future by the Managing Director of the Commission, provides the employee at least 30 days before any deduction written notice stating at a minimum:

(1) The agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The agency's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) An explanation of the agency's policy concerning interest, penalties, and administrative costs (Sections 1.1940 and 1.1941 of this regulation), a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Managing Director (or designee) of the Commission and documented in agency files (4 CFR § 102.2(e)).

(7) The employee's right to a hearing conducted by an official arranged by the agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by this Subpart.

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That the final decision in the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false, misleading, or frivolous statements, representations, or evidence may subject the employee to:

(A) disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statutes or regulations.

(B) penalties under the False Claims Act §§ 3729-3731 of Title 31, United States Code, or any other applicable statutory authority; or

(C) criminal penalties under §§ 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the date of delivery, or shall be mailed by certified mail return receipt requested.

(c) No notification, hearing, written responses or final decisions under this regulation are required by the Commission for any adjustment to pay arising out of an employee's election of coverage, or change in coverage, under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

#### 1. 1928 Hearing.

(a) Petition for Hearing.

(1) A hearing may be requested by filing a written petition with the Managing Director of the Commission, or such other official as may be named by the Managing Director of the Commission, stating why the employee believes the determination of the agency concerning the existence or the amount of the debt is in error.

(2) The employee's petition must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petition is received after the fifteenth (15) calendar day deadline referred to above, the Commission will nevertheless accept the petition if the employee can show that the delay was due to circumstances beyond his or her control, or because of failure to receive notice of the time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (3) above, and is not accepted pursuant to paragraph (4) above, the employee's right to hearing will be considered waived, and salary offset will be implemented by the Commission.

(b) Type of Hearing.

(1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of the Commission except that nothing herein shall be construed to prohibit the



appointment of an administrative law judge by the Commission. In determining the type of hearing, the hearing officer will consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the agency and employee will be given a full opportunity to present their respective positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent himself or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer shall be in writing, and shall state:

(A) The facts purported to evidence the nature and origin of the alleged debt;

(B) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to -

(i) The employee's and/or agency's grounds,

(ii) The amount and validity of the alleged debt and,

(iii) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the agency.

#### 1. 1929 Deduction from pay.

(a) Deduction by salary offset, from an employee's current disposable pay, shall be subject to the following conditions:

(1) Ordinarily, debts to the United States should be collected in full, in one lump sum. This will be done when funds are available for payment in one lump sum, or, if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection will normally be made in installments.

(2) The installments shall not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(3) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following the date of: the employee's written consent to salary offset, the waiver of hearing, or the decision issued by the hearing officer.

(4) Installment deductions must be made over a period not greater than the anticipated period of employment except as provided in section 1.1930.

#### 1. 1930 Liquidation from final check or recovery from other payment.

(a) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset of the entire remaining balance of the debt may be made from a final payment of any nature, including, but not limited to, final salary payment or lump-sum leave due the employee as of the date of separation, to such extent as is necessary to liquidate the debt.

(b) If the debt cannot be liquidated by offset from a final payment, offset may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to section 1.1913 of this regulation.

#### 1. 1931 Non - waiver rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. § 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. § 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

#### 1. 1932 Refunds.

(a) Refunds shall promptly be made when -

(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

#### 1. 1933 Interest, penalties, and administrative costs.

The assessment of interest, penalties and administrative costs shall be in accordance with sections 1.1940 and 1.1941 of this regulation.

#### 1. 1934 Recovery when paying agency is not creditor agency.

(a) Responsibilities of creditor agency. Upon completion of the procedures established under 5 U.S.C. § 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the paying agency of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent or statement is forwarded to the paying agency, the creditor agency also must advise the paying agency of the action(s) taken under 5 U.S.C. § 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a)(1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable to the employee's paying agency.

(5) If the employee is in the process of separating, the creditor agency must submit its claim to the employee's paying agency for collection pursuant to § 1.1930. The paying agency must certify the total amount of its collection and provide copies to the creditor agency and the employee as stated in paragraph (c)(1) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making

such payments that the debtor owes a debt (including the amount) and that there has been full compliance with the provisions of this section. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(6) If the employee is already separated and all payments from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 C.F.R. §§ 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (31 U.S.C. § 3716 and 4 C.F.R. § 102.4)

(b) Responsibilities of paying agency -

(1) Complete claim. When the paying agency receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice that the paying agency has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) Incomplete claim. When the paying agency receives an incomplete debt claim from a creditor agency, the paying agency must return the debt claim with a notice that procedures under 5 U.S.C. § 5514 and this subpart must be provided, and a properly certified debt claim received, before action will be taken to collect from the employee's current pay account.

(3) Review. The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) Employees who transfer from one paying agency to another.

(1) If, after the creditor agency has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. § 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

### 1. 1935 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in Appendix

A of 5 C.F.R. part 581 for a hearing official, and the paying agency must then cooperate as provided by 4 C.F.R. § 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of 5 C.F.R. Part 581 to arrange for a hearing official. Agencies must then cooperate as required by 4 C.F.R. § 102.1 and provide a hearing official.

## Interest, Penalties, and Administrative Costs

### 1. 1940 Assessment.

(a) Except as provided in paragraph (h) of this section, or section 1.1941, the Commission shall assess interest, penalties and administrative costs on debts owed to the United States pursuant to 31 U.S.C. § 3717. Before assessing these charges, the Commission will mail or hand-deliver a written notice to the debtor explaining the agency's requirements concerning these charges.

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor, using the most current address that is available to the agency. If the Commission should use an "advance billing" procedure - that is, if it mails a bill before a debt is actually owed - it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury Tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the *Federal Register* and the Treasury Financial Manual Bulletin annually or quarterly, in accordance with 31 U.S.C. § 3717. The Commission may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the Commission may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest will not be assessed on accrued interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment schedule.

(d) The Commission shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt - that is, the additional costs incurred in processing and handling the debt because it became delinquent. Calculation of administrative costs shall be based upon actual costs incurred or upon costs analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to the delinquency.

(e) The Commission shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to the outstanding principal.

(g) The Commission will waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. It may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, the Commission may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in Part 103 of the Federal Claims Collection Standards (4 C.F.R. Part 103) relating to the compromise of claims (without regard to the amount of the debt), or if it determines that collection of these charges would be against equity and good conscience, or not in the best interest of the United States. Waiver under the first sentence of this paragraph (g) is mandatory. Under the second and third sentences, it may be exercised under appropriate circumstances. Examples of appropriate circumstances include:

(1) Waiver of interest pending the agency's disposition of a request for reconsideration, administrative review, or waiver of the underlying debt under a permissive statute, and

(2) Waiver of interest where the Commission has accepted an installment plan under section 1.1914, and there is no indication of fault or lack of good faith on the part of the debtor.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 104.2(c)(1) of the Federal Claims Collection Standards (4 C.F.R. Part 104).

#### **1. 1941 Exemptions.**

(a) The provisions concerning interest and penalty on claims contained in 31 U.S.C. § 3717 do not apply:

(1) To debts owed by any State or local government;

(2) to debts arising under contracts which were executed prior to, and were in effect on (*i.e.*, were not completed as of), October 25, 1982;

(3) to debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(b) However, the Commission is authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. § 3717 to the extent authorized under the common law or other applicable statutory authority.

#### **1. 1942 Other sanctions.**

The remedies and sanctions available to the Commission in this subpart are not exclusive. The Commission may impose other sanctions, where permitted by law, for

any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In such cases, the Commission will provide notice, as required by law, to the debtor prior to imposition of any such sanction.

### **Cooperation with the Internal Revenue Service**

#### **1. 1950 Reporting discharged debts to the Internal Revenue Service**

When the Commission discharges a debt for less than the full value of the indebtedness, it will report the outstanding balance discharged, not including interest, to the Internal Revenue Service, using IRS Form 1099-G or any other form prescribed by the Service, when:

(a) The principal amount of the debt not in dispute is \$600 or more; and

(b) The obligation has not been discharged in a bankruptcy proceeding; and

(c) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

#### **1. 1951 Offset against tax refunds.**

The Commission will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. § 6402, in accordance with the provisions of 31 U.S.C. § 3720A and Treasury Department regulations.

### **General provisions concerning interagency requests**

#### **1. 1952 Interagency requests.**

(a) Requests to the Commission by other Federal agencies for administrative or salary offset shall be in writing and forwarded to the Financial Services Branch, FCC, 1919 M Street, N.W., Washington, D.C. 20554.

(b) Requests by the Commission to other Federal agencies holding funds payable to the debtor will be in writing and forwarded, certified return receipt, as specified by that agency in its regulations. If the agency's rules governing this matter are not readily available or identifiable, the request will be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from the Commission shall be accompanied by a certification that the debtor owes the debt (including the amount) and that the procedures for administrative or salary offset contained in this subpart, or comparable procedures prescribed by the requesting agency, have been fully complied with. The Commission will cooperate with other agencies in effecting collection.

(d) Requests to and from the Commission shall be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days will be forwarded 10 calendar days prior to the expiration of the first 30-day period.

## FOOTNOTES

<sup>1</sup> *Amendment of Part 1 of the Commission's Rules and Regulations regarding Implementation of the Debt Collection Act of 1982*, 2 FCC Rcd 7339 (1987), 52 Fed. Reg. 48725 (1987).

<sup>2</sup> The uniform standards are set forth at 4 C.F.R. §§ 101.1-105.5 (1987).

<sup>3</sup> 5 C.F.R. § 550.1101-550.1108 (1987).

<sup>4</sup> "Administrative offset" is the withholding of money owed to, or held for, a person by the Government to satisfy a debt owed by that person to the Government. See 31 U.S.C. § 3701(a)(1). "Salary offsets" provide for the recovery of money owed by federal employees to the Government, through deductions against salary or other benefits that accrue from federal employment. See 5 U.S.C. § 5514.

<sup>5</sup> The *Notice of Proposed Rule Making* sets forth a fuller explanation of the Commission's proposed rules.

<sup>6</sup> Rather than modifying the definition of "debt," as suggested by NITCO, we have achieved the same result by adding explanatory language to Rule 1.1905, which specifically addresses the use of procedures required by other statutes.

<sup>7</sup> Section 13(b) of the Debt Collection Act, which amended the Federal Claims Collection Act of 1966, 31 U.S.C. § 3701, provides:

For purposes of [the Federal Claims Collection Act], the term "claim" includes amounts owing on account of loans insured or guaranteed by the United States and all other amounts due the United States from fees, duties, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, taxes, forfeitures, and other sources.

<sup>8</sup> The specific procedures followed by the Commission in assessing and collecting monetary forfeitures are set forth in 47 C.F.R. § 1.80.

<sup>9</sup> The General Services Administration, in consultation with the Department of Justice, similarly determined that Government claims arising out of contracts subject to the Contract Disputes Act of 1978, 41 U.S.C. § 601-613, would be resolved through the dispute-resolution process prescribed by that statute, and not pursuant to the Debt Collection Act provisions. See 41 C.F.R. § 105-55.003; 50 Fed. Reg. 37529, 37530 (1985). The Commission also will incorporate that same determination in its own rules. See Section 1.1902(b). In addition, claims arising from the audit of transportation accounts conducted pursuant to 31 U.S.C. § 3726 will be collected or settled in accordance with regulations issued under that statute. See Section 1.1902(a).

<sup>10</sup> Treasury Department regulations implementing the tax refund offset program do state, however, that the program may be used to facilitate the collection of forfeiture penalties. See 31 C.F.R. § 5.25.

<sup>11</sup> We note that section 2653(a)(1) of the Deficit Reduction Act is applicable only to refunds payable after December 31, 1985, and before July 1, 1988. See 26 U.S.C. § 6402, note; 31 U.S.C. § 3720A, note. Further, section 9402(c) of the Omnibus Reconciliation Act of 1987 requires that the Comptroller General, in consultation with the Secretary of the Treasury, conduct a study on the operation and effectiveness of the tax refund offset program, with a report to be submitted to Congress no later than April 1, 1989. See 26 U.S.C. § 6402, note; 31 U.S.C. § 3720A, note. A bill already reported by the U.S. Senate Finance Committee would extend the program permanently. Thus, we have determined that the best course of action at this juncture is to promulgate our rule implementing section 2653, as proposed. Of course, if the tax refund offset program is not ex-

tended, or if it is subsequently repealed, we will take appropriate action to amend our debt collection regulations to reflect the congressional mandate in this matter.

<sup>12</sup> A few, non-substantive editorial changes have been made in the proposed rules to ensure their clarity and accuracy.